

[REPORTED WITHOUT AMENDMENT]

92D CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
1st Session } No. 92-481

ESTABLISHING A SURVIVOR BENEFIT PLAN FOR
MEMBERS OF THE ARMED FORCES IN RETIREMENT,
AND FOR OTHER PURPOSES

SEPTEMBER 16, 1971.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. PIKE, from the Committee on Armed Services,
submitted the following

REPORT

together with additional views

[To accompany H.R. 10670]

The Committee on Armed Services, to whom was referred the bill (H.R. 10670) to amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The principal purpose of the bill is to establish a survivor benefit program for military personnel in retirement which supplements the survivorship benefits of Social Security and which provides for all career members of the Armed Forces an opportunity to leave a portion of their retired pay to their survivors at a reasonable cost.

The bill would also:

(1) Provide a program of minimum income guarantee for present military widows to assure an income of at least \$2,000 per year; and

(2) Provide for the attachment of up to 50 percent of military retired or retainer pay to comply with the order of a court of competent jurisdiction in favor of a spouse, former spouse or children.

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BACKGROUND

There is, at present, no universally applicable system which automatically provides for survivors' rights in the retired pay of military personnel.

The military man retires relatively early and may draw retired pay for many years; if he achieves normal life expectancy, his period of drawing retired pay may last $1\frac{1}{2}$ times as long as his period of active service. However, there is no equity in his retired pay which automatically accrues to his survivors. If he dies from nonservice-connected causes a few months after he retires, the total entitlement to income as a result of his earned retirement may terminate with his death.

The lack of assured survivor protection is one of the few gaps in the singularly outstanding program of fringe benefits available to military personnel.

Present programs: incomplete, inadequate, or nonexistent

Survivor protection presently available for military families is incomplete; is often inadequate; is, in some cases, excessively costly; and is frequently nonexistent. There are a number of Federal programs administered by several different departments or agencies which provide various survivor benefits in certain cases. The total result is complexity and duplication of systems, enormous confusion for individuals concerned and often lack of any benefits for those who need them most.

For dependents of men who die on active duty there is *always* survivor protection. This is provided by a combination of the Dependency and Indemnity Compensation (DIC) provided by the Veterans' Administration, which is a lifetime benefit for the surviving spouse, and Social Security benefits consisting of the Social Security mother's insurance benefits, which continue until the youngest child is 18 (22 if in school), and Social Security old-age benefits beginning at age 62 (or age 60 on an actuarially reduced basis).

These benefits for survivors of active-duty personnel are generous in relation to pay and grade for the majority of people on active duty and particularly so for lower-ranked personnel and those with short years of service.

For dependents of retirees there is some survivor protection, depending upon the individual circumstances, as follows:

(1) Social Security benefits which are independent of active or retired status of the member. If there are children under 18 (22 if in school), there are the considerable mother's insurance benefits of Social Security. When the widow is age 62, there is the Social Security survivor benefit (available at age 60 on an actuarially reduced basis). For the widow under age 62 without minor children there is no inherent right to benefits, and these can be years of extraordinary hardship for the military widow.

(2) DIC for the survivors of a retiree who dies as a result of a service-connected cause. However, even though a man retired for service-connected disability, if he dies from a nonservice-connected cause, his survivors are ineligible for any DIC benefits.

(3) The Retired Serviceman's Family Protection Plan (RSFPP), initially called the Contingency Option Act, a self-financing program available since 1953 to permit a member of

the uniformed services to provide a percentage of his retired pay as an annuity for his survivors. The reduction in retired pay is computed under an actuarial equivalent method so that on the average each participant pays an amount which, when interest is paid thereon, is equal to the value of payments his survivors are expected to receive. Despite seven revisions by the Congress over the past seventeen years to make it more attractive, RSFPP has proved a failure in providing general survivor protection; and only about 15 percent of eligible military retirees have participated. This means that the survivors of 85 percent of deceased eligible retirees have no claim to any part of the member's military retired pay.

RSFPP has proved to be too expensive and too complex. Because it is actuarially sound, RSFPP is relatively expensive for the individual and this discourages participation by those who need it most: the lower-income retirees. RSFPP requires an election to participate before completing the 19th year of service or two years prior to retirement, whichever is later. The cost depends on the member's age, his dependents' ages and his pay at the time of retirement; so the cost varies for each individual and is difficult to explain to prospective retirees.

An idea of the costly nature of RSFPP can be gained from the following example: A master sergeant (E-8) with twenty-four years of service and retired pay of \$470 a month must take a retired pay reduction of \$43 a month to leave his widow an annuity of \$235 (50 percent). A retired Civil Servant with the same dollar amount of retired pay has a deduction of \$24 a month to leave his survivor an annuity of \$258 a month (55 percent).

ORIGIN OF PRESENT LEGISLATION

The present bill, H.R. 10670, grew out of an extensive study by a subcommittee of the Committee on Armed Services in the 91st Congress. The subcommittee conducted seven days of open hearings in which it heard testimony from Members of Congress, representatives of the Department of Defense, the Social Security Administration, the Veterans' Administration, the Civil Service Commission and numerous spokesmen for military and veterans' organizations. In addition, the subcommittee heard testimony from individual widows of officers and enlisted men from various parts of the country.

All of the organizations and witnesses that testified before the subcommittee agreed that present programs are wholly inadequate and that some form of a new survivor benefit program should be made available to military personnel in retirement.

The findings and conclusions of the study were reported extensively in House Armed Services Committee document 91-68.

The study resulted in a recommended program which was incorporated in a bill introduced in the 91st Congress and reintroduced this year as H.R. 984.¹ Hearings were held on H.R. 984 on August 2 of this year.

¹ Recommendations concerning benefits for survivors of long-term active duty personnel, which in part are under the jurisdiction of the Veterans Affairs Committee, were also contained in Armed Services Committee document 91-68.

The Department of Defense declined to take a position for or against specific survivor benefit legislation in the 91st Congress. On May 24 of this year, in response to a request from the Committee, the Department of Defense stated its formal position on H.R. 984 and testified to that position in this year's hearings. Essentially, the Department supported the need for such legislation and the principal features of the Committee's bill but recommended some modifications. The Committee incorporated many of the Defense Department's suggestions in arriving at the final version of the bill. Committee action on specific Defense Department recommendations is spelled out further on in this report.

H.R. 10670, a clean bill

H.R. 10670 is a clean bill which supersedes H.R. 984.

The incorporation of Defense Department recommendations and various technical perfecting changes made the introduction of a clean bill advisable. The major substantive provisions of H.R. 984 are continued in the present bill.

PHILOSOPHICAL BASIS FOR THE COMMITTEE BILL

H.R. 10670 would establish a new program of survivor benefits for military personnel in retirement. In drafting the legislation, the Committee sought to create a bill that would provide a fair level of income replacement for survivors, that would call for some cost sharing at a reasonable level by the retiree, that would meet the government's obligation to survivors and still be acceptable in terms of its financial demands on the government, that could be generally applicable to all military retirees, and that would be easily understood by members of the retired community and their dependents.

In arriving at its bill the Committee has been guided by two broad, general concepts:

To build on the foundation provided by Social Security; and

To parallel, to the extent feasible, the successful survivor benefits program of the Civil Service Retirement System.

The value of Social Security

Social Security was originally extended to military personnel in 1957 as a result of a survivor benefits program enacted by a special House subcommittee composed of Representatives from the Armed Services, Veterans' Affairs and Ways and Means Committees. That subcommittee was under the chairmanship of the distinguished former member of the Armed Services Committee, the Honorable Porter Hardy of Virginia.

The government, with its matching contributions as employer, contributed over \$600 million to the Social Security fund in fiscal year 1970 for military personnel. This is roughly one-half of the Federal government's annual obligation to the Civil Service retirement fund. Thus, the government is already spending a considerable amount for survivor benefits for military personnel via its annual contribution to the Social Security trust fund.

The Social Security mother's insurance payments are of tremendous importance to widows of servicemen with young children; and the

old-age benefits add to the value of a serviceman's estate, both in terms of the benefits he receives himself and the benefits available to his widow. Social Security benefits for military members' survivors are significant. Family benefits often exceed \$3,500 annually.

The Committee does not wish to see lost to the military family the great advantages of Social Security. Social Security is the basic income-maintenance program for the nation, and the Committee believes the families of military personnel should continue to share in that program. The Committee, therefore, determined to build on the foundation of Social Security, attempting to provide survivor protection where it does not exist and to enhance it where it is inadequate.

The Committee, therefore, has provided for integration of the new survivor benefits program with Social Security benefits, as explained in detail further on in this report.

Civil Service survivor benefits

The Committee was aware in its review of the wide acceptance gained by the Civil Service survivor annuity system and was equally aware of the tendency in recent years to equate military and Civil Service benefits. Many of those who testified in Committee hearings recommended a system similar or identical to the Civil Service system for military survivors.

The Committee does not believe an identical system would be appropriate. However, it has attempted to make its program comparable with that of the Civil Service whenever feasible and desirable. For example, H.R. 10670 follows the same cost-sharing formula as the Civil Service system and provides the same maximum level of benefits as income replacement for the survivor.

The Committee wishes to make clear, however, that it does not believe a completely identical system would be appropriate because of the advantages of Social Security to military personnel and because of the significant differences in the nature of a military career as compared to a Civil Service career. Civil Servants are not covered by Social Security. The Committee, therefore, has not hesitated to depart from the precedent of the Civil Service system when it believed that system's approach would be unsuitable for a military program.

DISCUSSION OF PRINCIPAL FEATURES OF PERMANENT PROGRAM CREATED BY THE BILL

Level of benefit

The Committee found ample precedent for determining the suitable level of income maintenance for survivors—that is, the need to replace income lost as the result of the death of the service member. The program provides that the survivor annuity is 55 percent of the base amount on which the annuity is computed. The base amount is the member's full retired pay unless he designates a smaller amount of his retired pay as the base. Thus the maximum level of survivor annuity under the program is 55 percent of the member's retired pay. This is the same percentage used in the Civil Service survivor annuity system.

Cost sharing

The military retiree would share in the cost of the survivor annuity by deductions from his retired pay.

The program provides for a monthly deduction of 2½ percent for the first \$300 of the base amount and 10 percent for anything over that figure up to a maximum of the man's retired pay, the same formula used under the Civil Service annuity system.

All of the cost sharing by the military man would be during his retirement; there would be no effect on his income during his active-duty years. The Committee would point out that almost all of the military and veterans' organizations which testified during hearings supported the cost-sharing approach.

Under the bill's cost-sharing formula, the retiree's retired pay deductions would pay, on the average, approximately 60 percent of the cost of his survivors' annuity. This is the same percentage of the cost actually experienced by Civil Service personnel in their retired survivor-annuity system.

The following table illustrates how the level of benefits and cost-sharing formula under H.R. 10670 provides an improved benefit to the Armed Forces member in terms of his cost and the survivor benefit when compared to what the serviceman can now purchase under the Retired Serviceman's Family Protection Plan:

EXAMPLES OF COST TO THE MEMBER AND BENEFIT TO THE SURVIVOR UNDER RSFPP AND R.H. 10670

[Dollar amounts monthly]

Grade	Length of service	Retired pay ¹	RSFPP ²		H.R. 10670	
			Member cost	Survivor benefit ³	Member cost	Survivor benefit
E-6-----	20	\$287.25	\$21.89	\$143.63	\$7.18	\$157.99
E-8-----	24	470.16	43.42	235.08	24.52	258.59
E-9-----	30	731.25	88.59	365.63	50.62	402.19
O-4-----	20	615.15	56.81	307.58	39.01	338.33
O-5-----	26	956.28	115.85	478.14	73.13	525.95
O-6-----	30	1,352.48	193.00	676.24	112.75	743.86

¹ Based on pay scales effective Jan. 1, 1971.

² Assumes enlisted men entered active duty at age 19 and officers at age 23. Wives are assumed to be 3 years younger than their husbands. Member cost assumes only the wife is covered.

³ 50 percent of retired pay. Benefit is not adjusted for CPI increases.

⁴ 55 percent of retired pay. Benefit will be increased as the CPI increases.

Automatic coverage

Section 1448(a) of the bill provides that the program applies automatically to all future retirees at the time of retirement if they are married or have a dependent child or children unless they elect not to participate. The base amount on which coverage will be prescribed will be the member's retired pay, thus providing for a survivor annuity of 55 percent of that retired pay unless the retiree elects a reduced base on which to provide an annuity.

If a retiree who is married elects not to participate in the plan at the maximum level, the bill provides that person's spouse shall be notified. The Committee believes the program will receive overwhelming acceptance, such as has been experienced by the Civil Service survivor annuity system. However, the Committee is concerned that in a relatively few cases survivors may unknowingly be left in a situation of great hardship because a retiree, for one reason or another, did not join the program or otherwise provide an adequate annuity for his dependents.

It is the intention of the Committee, therefore, that regulations designed to carry out this provision of the bill provide for counseling by competent officers for those about to retire who elect not to participate or elect to participate at less than the maximum level. It is further the intention of the Committee that the spouse of the member concerned will be present at the counseling session if possible or provided separate counseling as necessary to be made fully aware of the options available and the election made by her husband. It is the intention of the Committee that in satisfaction of this requirement counseling officers shall certify, in the event the retiree elects not to participate or to participate at less than the maximum level, that counseling has been provided and shall present the spouse with a statement that specifies she has been counseled and indicates the counseling officer's satisfaction that she fully understands the implications of her husband's election. The spouse should be invited to sign the statement indicating she has been counseled and understands the decision. The counseling officer should stand ready to provide any further information that the retiree or the spouse may require.

This new survivor annuity program makes a significant addition to the estate of the military retiree, and the Committee does not want a benefit of this magnitude lost to an individual service family through lack of awareness. It therefore wishes responsibility clearly placed on administrative officers to see that full counseling has been provided as to the effect on survivors of an election not to participate or to participate at a reduced level.

The rights in retirement pay accrue to the retiree and, ultimately, the decision is his as to whether or not to leave part of that retirement pay as an annuity to his survivors. However, the Committee wants every effort made to be sure that the advantage is not lost through neglect or lack of understanding and that the spouse fully understands the election may profoundly affect her future welfare.

It is also the desire of the Committee that in the case of the overwhelming majority of people who do participate in the program, suitable notification be provided to them when their participation has commenced with at least a brief explanation of the cost and of the significant advantages of the program. This notification could be provided to the retiree and his family through the mail with his first retirement check.

An election not to participate in the program by a retiree who is married at the time of retirement is irrevocable if not revoked before the date on which the person becomes entitled to retired or retainer pay.

MARRIAGE SUBSEQUENT TO RETIREMENT

A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay but who marries subsequent to his retirement may elect to participate in the program provided an election in writing is made within one year of the marriage. Such an election is irrevocable.

In such circumstances the spouse would be entitled to an annuity if, at the time of the death of the retiree, the spouse had been married for at least two years or there had been issue resulting from the marriage.

UNMARRIED RETIREES

A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay may elect to provide an annuity to a natural person with an insurable interest in him. However, the cost-sharing formula would be different in such cases and would provide for a reduction in retired pay of 10 percent plus an additional reduction of 5 percent for each full five years the individual named as survivor is younger than the retiree. The total deductions may not exceed 40 percent.

This special provision for unmarried retirees follows the same cost-sharing formula provided in the Civil Service retirement annuity system. The formula is designed to be actuarially sound—that is, the retiree contribution would be designed to pay the full cost of the annuity.

If the single retiree subsequently marries in retirement, he may change the election and provide an annuity to his spouse; and the retired pay deductions would be revised to be the same as that for other married personnel.

Supplement for survivors of personnel on active duty with more than twenty years' service

Benefits for survivors of active-duty personnel, as indicated earlier, are adequate in most cases and generous in relation to pay and grade for the majority of people on active duty. However, the program is somewhat weighted in terms of low-rank and short-term personnel. Therefore, for those in the more senior officer and enlisted grades with long years of service, the relative level of benefits falls off sharply in terms of its value for income replacement. In some cases, for example, DIC is considerably less than 55 percent of retired pay of senior personnel with long years of service.

The Committee was particularly concerned, in a program primarily designed to provide an adequate level of income replacement for survivors of career personnel, that a situation not be created where survivors of retired personnel receive higher benefits than the survivors of active-duty personnel of the same grade and same years of service.

The bill provides, therefore, that for those on active duty eligible for retirement on length of service, where the potential retired survivor annuity would be more than the DIC paid to survivors of active-duty personnel, a supplemental annuity payment sufficient to make up the difference will be made to the survivors by the Department of Defense.

The Committee is aware that in the case of a retired person a portion of the annuity is paid for by the retiree himself through reductions in his retired pay. Nevertheless, the Committee believes that in no case should the annuities for survivors of active-duty personnel eligible for retirement on length of service be lower than that of survivors of retirees of equal grade and equal length of service.

It should be clearly understood that payment of this supplement will in no way interfere with the DIC program which is administered by the Veterans' Administration.

Eligibility

The survivor annuity provided under this program accrues to the widow or widower of the retiree.

The survivor annuity is paid to the widow or widower while living or until remarriage if the remarriage occurs before reaching age 60. The annuity would not cease in the case of a widow or widower who remarries after age 60.

If the surviving spouse remarries before age 60 and the marriage is later terminated by death, annulment or divorce, payment of the annuity would be resumed as of the first day of the month when the marriage is so terminated.

If the surviving spouse is entitled to an annuity based on the second marriage, the spouse may elect which to receive but may not receive both.

When there is no eligible widow or widower, the benefits would go to the surviving dependent children in equal shares and the annuity would be paid as long as there are eligible children.

Dependent children would be covered until reaching 18 years of age, or until reaching 22 years of age if pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, college or university or comparable educational institution. Also included would be a dependent child incapable of supporting himself because of physical or mental incapacity existing before his 18th birthday or incurred before his 22nd birthday while pursuing a full-time course of study or training.

For a child pursuing a full-time course of study whose 22nd birthday occurs before July 1 or after August 31, the child is, for the purposes of the bill, considered to have become 22 years of age on the 1st of July after his 22nd birthday. This is to allow a dependent child to retain the benefits until the end of the school year in which he becomes 22. A similar provision is presently in law for the Civil Service retirement annuity system.

Eligible dependent children include an adopted child. Eligible dependent children also include a stepchild, foster child or recognized natural child who lived with the retiree in a regular parent-child relationship.

In addition, to qualify as a dependent child under the bill, a foster child must reside at the time of death of a person to whom the survivor benefit plan applies with that person, must receive over one-half of his support from that person, and must not be being cared for under a contract by that person with a social agency. (The temporary absence of a foster child from the residence while a student does not affect the residency of such foster child.)

The Committee included foster children under the program to achieve consistency with the treatment of foster children in other benefit programs run by the Department of Defense.

Present retirees

The bill provides that all present retirees could join the program regardless of age. Those presently on the retirement rolls would be given a year from the date of enactment of the legislation in which to elect to join the new plan.

Retirees would begin immediate deductions from their retired pay but would not have to pay back any additional amount because of age or meet any minimum period of participation.

The new program and the retired serviceman's family protection plan

Under the bill, the Retired Serviceman's Family Protection Plan (RSFPP) would be phased out in the future. Future retirees could join the new program, but no new entrants would be allowed in RSFPP following the date of the passage of the bill. Those not yet retired who have elected to join RSFPP would have the election voided and would come under the new program.

For those retired members who are participating in RSFPP, they would:

(a) Continue in RSFPP and refrain from joining the new program; or

(b) Drop RSFPP and join the new program on the same basis as others under the program; or

(c) Join the new program and continue their participation in RSFPP subject to a limitation on total annuity of 100 percent of the member's retired pay.

Since RSFPP is actuarially sound—that is, the members are contributing an amount equal to what the benefits will be—and since some members have paid a considerable sum into the program, the Committee felt that those retirees should have the right to continue their participation if they find it advantageous.

On the other hand, it would not be fair to penalize the retiree who made a greater effort to provide for his survivors in the past by denying him the opportunity to participate in the more attractive new program.

Hence, it is believed that as a matter of equity retirees under RSFPP, like all other retirees, should have an equal right to join the new program.

Some retired members have built up their estates around the RSFPP, and it would be difficult to drop it now.

It should be pointed out that RSFPP does not have and will not have any mechanism for future adjustment of annuities. While the annuity of the new program will receive CPI adjustment, the RSFPP annuity is up to 50 percent of the member's retired pay, and the amount remains unchanged during the life of the survivor.

It would appear in most cases to be quite clearly to the advantage of the retiree to join the new program, which is less expensive; which does not have the various restrictions of RSFPP; and in which the annuities will be periodically adjusted in line with the cost of living.

Service-connected retiree deaths

For retirees who die of a service-connected cause, as explained earlier, their dependents are at present and continue to be eligible for Dependency and Indemnity Compensation (DIC) payments. The bill provides that in the case of the death of such a retiree, who is also covered under the bill's program, if the annuity under the bill would exceed DIC, the widow would receive an annuity from the Depart-

ment of Defense to make up the difference between DIC and the total potential annuity. If the DIC exceeds the amount of annuity under the plan and, therefore, no annuity is payable, the full amount that had been deducted from the person's retired pay because of participation in the bill's program would be refunded to the widow or widower. When part of the annuity is payable, the person's retired or retainer pay deductions will be recalculated to determine the amount that would have been necessary to provide that level of benefit from the survivor-annuity program; and the amount by which the retired pay deductions had exceeded this recalculated amount would be refunded to the widow or widower.

Waiver of retired pay

Military retirees who waive a portion of their retired pay and receive VA compensation in lieu thereof—to the extent of a service-connected disability—would be eligible for the annuity program on the same basis as all other retirees, provided the same reductions were made from the retired pay. In other words, a retiree who wanted to leave up to 55 percent of his total retired pay as an annuity could do so by having the reductions for such annuity based upon the total retired pay to which he is entitled, including the portion that is waived.

Military personnel who later qualify for Civil Service retirement may waive their military retired pay and receive Civil Service retirement in lieu thereof, using their military time to increase the multiplier in the computation of their Civil Service retired pay. A military retiree in this situation would have the right to participate in the Survivor Benefit Plan provided in the bill if he made contributions into the Treasury equivalent to what retired pay reductions would be if he were, in fact, receiving the military retired pay.

It is the intention of the Committee that these payments into the Treasury be made periodically.

The present retiree with a waiver in effect on the date of enactment would have one year after that date to elect into the military annuity system, the same as all other present retirees.

The bill provides, however, that a survivor of such retiree would not be eligible for benefits from both Civil Service and military annuity programs.

The military retiree is not allowed to use military service toward Civil Service retirement computation for any years of military service after 1956 (the year in which military personnel became fully covered by Social Security). Many retirees, therefore, at age 62 will be in the position of wishing to withdraw their waiver of military retired pay and begin to receive the military retired pay once again. When that happens, the retiree, because he has continued contributions under the program, will have the advantage of the military Survivor Benefit Plan provided in the bill.

The bill provides that if a member dies while his waiver of retired pay is operative and his survivors receive the survivor benefit of the Civil Service system, so that he does not actually receive any survivor benefits from the military Survivor Benefit Plan provided in the bill, his contribution under this bill will be refunded to his survivors.

Integration with Social Security Benefits

As indicated earlier, the program created by the bill is designed to build upon the income-maintenance foundation of the Social Security system. Thus, the benefits are integrated with Social Security benefits.

Section 1450(a) of the bill provides, therefore, that when the widow reaches age 62, or when there are no dependent children, whichever occurs later, the monthly annuity paid under the Survivor Benefit Plan shall be reduced by an amount equal to the amount of Social Security survivor benefit, if any, to which the widow is entitled based solely upon the active military service of the retiree. [A widow's Social Security benefit is calculated at 82.5 percent of her husband's Primary Insurance Amount (PIA).]

In other words, when the widow reaches age 62, her annuity based on her husband's military retired pay would be offset by the equivalent of the Social Security payment which is *attributable to her husband's military service*.

CALCULATION OF SOCIAL SECURITY ATTRIBUTABLE TO ACTIVE MILITARY SERVICE

The determination of the portion of the Social Security benefit to the widow at age 62 which is attributable to her husband's active military service assumes that the military retiree had no employment covered by Social Security subsequent to military service and that he lived to age 65. This is the most favorable way that could be devised for determining the percentage of Social Security attributable to military service. The military man, on the average, retires in his mid-40's and will have, therefore, around twenty years between his military retirement and his age 65. Since Social Security benefits are reduced somewhat by all the years after the initial year of coverage in which there are no earnings—except for the subtraction of the five lowest years—the assumption that there is no covered employment following military retirement will lower the relative value of the Social Security attributable to military service and, in turn, result in the lowering of the offset from the widow's Social Security payment.

In the great majority of cases the military retiree works subsequent to active military service; and in the great majority of instances where the retiree continues to work the employment is covered by Social Security. Thus, the value of his Social Security benefits will often be higher than what is calculated by the assumptions called for in the bill. (In addition, the man who dies prior to age 65 would have, in point of fact, a lesser number of years without any benefits earned in the calculation of his average Primary Insurance Amount. By assuming he lives to age 65, the average of his Social Security is reduced, because of the maximum possible amount of nonearning years in the computation, and thus the widow's offset at age 62 is likewise reduced.)

However, the Committee has chosen to use this most generous formula for determining Social Security widow's benefits attributable to the spouse's military service to be assured that military annuities will not be reduced because of Social Security earned outside government service and to assure that a widow will receive at least 55 percent of the man's military retired pay.

INTEGRATION AND REAL INCOME OF WIDOW

Several things should be clearly understood about this aspect of the program proposed in the Committee's bill:

The program has no effect on the Social Security payments that the military retiree receives himself while still alive or upon the percentage of his Social Security (50 percent) which normally goes to a wife if the husband is still living. It would affect only the widow's annuity, which is normally 82.5 percent of the husband's Social Security retirement benefit.

In terms of real income the widow will invariably gain at age 62, even with the integration of benefits, because the Social Security portion of her annuity is not taxable. She may, in addition, receive other advantages under the tax laws at age 62.

There is no reduction in the Social Security benefits that may have been earned as the result of the husband's employment in his post-retirement years or any amount above the amount of the survivor benefit flowing from her husband's military service that the widow may have earned in her own right in private employment. It cannot be over-emphasized that the only Social Security payments which are taken into account in this integration of benefits are the payments to the widow *based on her husband's Social Security earned while he was on active duty in military service.*

In the years prior to age 62, there will be no reduction if the widow has more than one child under 18 (or under 22 if attending school) and is receiving survivorship insurance payments from Social Security. In this situation there is an adding-on of benefits. However, the Committee believed that in these high-expense years when the burdens of rearing a family are thrown wholly on a widow, the payment of the full 55-percent survivor annuity based on the husband's military retired pay plus the Social Security survivorship benefits is justified.

Because the Social Security benefit, as percentage of retired pay, varies from grade to grade, the portion of the military survivor annuity that the widow or widower will receive after age 62 will, in some cases, be a higher percentage of the retired member's military retired pay than others. This situation, at first glance, might appear to give a higher percentage of military survivor annuity to the survivors of higher-income retirees. In point of fact, the same percentage of retired pay flows to all annuitants regardless of source; and the difference in percentage of military survivor annuity in the total income after age 62 comes about simply because Social Security is weighted heavily in favor of lower-income employees.

It will thus be seen that the Committee's program assures a reasonable level of income maintenance for the military survivor throughout her lifetime, providing 55 percent of the deceased member's military retired pay during the gap years before age 62—when she now often receives nothing—and assuring, after age 62, a combination of military annuity and Social Security benefits which will at least equal 55 percent of the deceased member's military retired pay and which, because of a variety of factors, will frequently be more than that. The Committee believes that this program provides a level of income replacement which is liberal by standards in our society, is reasonable in its demands on the government and meets the test of equity towards survivors of retired career personnel.

Partial reduction of benefits for widow and one child

Where there is a widow and one child, under Social Security the family benefits consist of separate payments for the mother and the child. The bill provides that in such cases the military survivor annuity will be reduced by an amount equivalent to the mother's payment from the Social Security program to which the widow would be entitled based solely upon her husband's active military service. This reduction is made regardless of age of the widow. The mother's payment under Social Security is normally 75 percent of the Primary Insurance Amount (PIA), and the payment due to the child is also 75 percent of the PIA. There would be no reduction in the payment for the child, and thus the minimum family income in such cases would be 55 percent of the retired member's base amount plus the 75 percent of Social Security PIA for the child.

This integration of benefits in the case of a widow and one child is made in conformance with the principles outlined earlier by the Committee to build on Social Security benefits and to seek conformity with the Civil Service system wherever feasible. Civil Service personnel are not covered by Social Security. However, Civil Service provides children's benefits based on a payment of \$996 per year per child with a maximum payment that for three children (\$2,988). With the exception of the widow with one child, the payment for military surviving widows with children receiving the military survivor annuity provided in the bill plus Social Security is comparable to the payments provided to Civil Service widows with children receiving the Civil Service retirement survivor annuity plus the Civil Service children's benefit. With the offset provided in the bill for a widow with one child, the benefits for the widow and one child will be comparable under both the military and Civil Service systems. If the full amount of the mother's payment under Social Security were allowed, in addition to the child's payment for the military widow with one child, her total payments would be much higher than those available to the Civil Service widow with one child. The Committee has, therefore, provided the integration described above in the bill which provides a benefit that is both fair and comparable to Civil Service.

The following table compares the payments to widows with children under the bill and the Civil Service system:

COMPARISON: CIVIL SERVICE AND MILITARY SURVIVOR BENEFITS¹

[Annual amounts]

Grade	Length of service	Payments to family including the 55-percent payment to widow					
		Widow plus 1 child		Widow plus 2 children		Widow plus 3 or more children	
		CSR	Military	CSR	Military	CSR	Military
E-6-----	20	\$2,892	\$2,861	\$3,888	\$3,826	\$4,884	\$3,826
E-8-----	26	4,732	4,866	5,728	5,996	6,724	5,996
E-9-----	30	5,821	6,080	6,818	7,334	7,814	7,334
O-4-----	20	5,056	5,218	6,052	6,376	7,048	6,376
O-5-----	24	6,822	7,067	7,818	8,308	8,814	8,308
O-6-----	30	9,922	10,318	10,918	11,894	11,914	11,894

¹ Social security family benefits attributable to military service are calculated as in the bill assuming no 2d career earnings between military retirement and retiree's age 65. The mother's benefit is subtracted from the annuity when the military family consists of only a widow and a child. Civil service children's benefits are based on \$996 per year per child (maximum payment is for 3 children).

Note: CSR—Civil service retirement.

Cost-of-living increase

The widow's or widower's annuity under the bill would be calculated on the base amount of the member's retired pay at the time of

death. His retired pay would have been adjusted with the cost of living since his retirement under the formula presently in law for such adjustments. The bill provides that his retired pay deductions for the survivor annuity would be adjusted accordingly.

Under the bill the annuity for survivors would be increased anytime retired pay is increased and by the same percentage. This adjustment provision, which is based on the assumption that retired-pay increases will continue to be made according to the Consumer Price Index (CPI) formula, will protect the annuitant from the loss of buying power because of increases in the cost of living.

One-year transitional period

Subsection (a) of section 3 of the bill provides a one-year transitional period for those who are retiring at the time the bill is enacted so they would be spared having to either automatically join the plan or irrevocably elect out on short notice. The bill provides that a married person or person with a dependent child who becomes entitled to retired or retainer pay within six months after the enactment of the bill shall have six months from the day of retirement to elect not to participate in the Survivor Benefit Plan established by the bill.

ATTACHMENT OF RETIRED AND RETAINER PAY

During the course of its study, the Committee received numerous letters from wives or ex-wives of career military personnel saying that after serving along with their husbands during all or a portion of their husbands' military careers, the marriage had terminated and a divorce action or a suit for separate maintenance had been adjudicated and the court had made a decree for alimony or support money to provide for their care and care of their dependent children. Yet despite such an award by a court of competent jurisdiction, the retirees were not honoring such a court decree. Attempts at court actions to force the retirees to pay the amount awarded by the court are frequently thwarted by a retiree pulling up stakes in the state in which he is being sued and moving to another where legal action must commence again.

The Committee also had letters from Members of Congress citing instances where the families of retired service personnel are living on welfare while the retired military person is retaining all of his retirement pay.

While there are several provisions in the United States Code specifically excluding the government salaries of certain classes of employees from attachment, there are no specific statutes precluding attachment of military active-duty or retired pay. There is, however, a Supreme Court case, *Buchanan vs. Alexander*, 45 U.S. (HOW) 20, (1846) which established the principle that pay while still in the possession of the United States Government cannot be attached. The Court reasoned that the funds of the government were specifically appropriated to certain national objectives; and if such appropriations were diverted and defeated by state process, the functions of government may be suspended.

This principle has been further interpreted in the case of *Applegate vs. Applegate* 38 F. Supp. 887, (1941). This is a case where the wife of a retired naval officer brought an action in the Federal District Court against the officer and the naval paymaster to collect unpaid alimony due under divorce decree of the District Court for the District of Columbia. The Court granted a motion to dismiss on several

grounds, the prime one being that action cannot be obtained without the consent of the United States to be sued. The Court stated:

The rule laid down by Justice McLean in *Buchanan vs. Alexander*, 4 HOW 20, 11 L.Ed. 857, has never been departed from. While the Congress has seen fit to waive the immunity of the United States from suit in the case of certain money claims against it and also in case of many of the corporations created by it, it has so far never waived that immunity and permitted attachment or garnishee proceedings against the United States Treasury or its Disbursing Officers. This cannot be done either directly, or indirectly through the appointment of a sequestrator or receiver or by contempt order against the debator defendant. *McGrew vs. McGrew*, 59 App. D.C. 230, 38 F. 2d 541.

This is not a question of any right of personal exemption on the part of the defendant Applegate but of the sovereign immunity of the United States from suits to which it has not consented. This immunity from suit cannot be evaded by making an officer of the United States in his official capacity defendant instead of making the Government itself a defendant. An officer acting in his official capacity and within his legal rights is acting for the United States. A suit against him in his official capacity is a suit against the Government, and cannot be maintained without legislative consent. *Hill vs. United States*, 9 HOW 386, 3 L.Ed. 185; *United States of America, Petitioner, vs. Jacob L. Sherwood*, 61 S.Ct. 767, 85 L.Ed.—, decided by the Supreme Court of the United States March 31, 1941. Until the Congress sees fit to grant such consent, the Courts are powerless to entertain such actions.

We believe the language contained in Section 4 is governmental consent to such an action which would make retired or retainer pay attachable in an amount of up to 50 percent of such pay as provided by a court of competent jurisdiction in favor of a spouse, former spouse or children.

We recognize this is a drastic departure from anything we have had in the past; but we believe it is wrong for the United States to protect retired and retainer pay while the military retiree can, for practical purposes, ignore court orders.

We would prefer that retired pay of all Federal employees be subject to these same rules, but the fact that it is not in no way lessens our obligation to correct what we believe to be wrong within the area of our jurisdiction.

We recognize that the great majority of military retirees meet their legal obligations, but there is a small minority who refuse to do so. We also recognize that the military retiree, because of the frequency of moves during the time spent on active duty, may have less roots in a particular community than his civilian counterpart.

While on active duty, the service has an opportunity to counsel with one regarding the legal obligations and family responsibilities; and failure to meet those obligations can result in dismissal from the service. However, once retired, the services have no control over the retiree.

This section obviously is a controversial one; but we believe that when a court has determined that equity lies with the spouse, ex-spouse or dependent children, attachment should be authorized.

A MINIMUM INCOME PROGRAM FOR CURRENT MILITARY WIDOWS

Section 5 of the bill provides a separate program of a minimum income guarantee for current military widows, for whom the new Survivor Benefit Plan comes too late.

Evidence gathered by the Committee indicates that some current widows are existing in conditions of extreme deprivation. In many cases these women are widows of personnel who retired prior to the provision of Social Security to Armed Forces personnel and, therefore, the Social Security benefits that are available to them, if any, are the minimal payments. Many of these widows are too old to continue to work or, if able to work, are at an age where their prospects of finding employment are virtually hopeless. Many of the older women are widows of men who retired even before RSFPP was available. They are widows of men who served in the military service at a time when active-duty pay scales were relatively low and did not have the assurance of reasonable comparability with private industry pay scales which is assured for military active-duty personnel today.

These women shared the burdens of military life, and the Committee believes that to the extent feasible financial assistance to them at the government's expense is justified.

Current widows who have no other means of income are eligible for the Nonservice-Connected Death Pension provided by the Veterans' Administration. Under that program widows are paid monthly amounts ranging from \$17 to \$81, depending upon other sources of income, if any. The following table shows the present rate of monthly payment in relation to outside annual income (Section 541, Title 38, U.S.C.):

Column I		Column II
Total annual income		
More than—	Equal to or but less than—	
	\$300	\$81
\$300	400	80
400	500	79
500	600	78
600	700	76
700	800	73
800	900	70
900	1,000	67
1,000	1,100	64
1,100	1,200	61
1,200	1,300	58
1,300	1,400	55
1,400	1,500	51
1,500	1,600	48
1,600	1,700	45
1,700	1,800	41
1,800	1,900	37
1,900	2,000	33
2,000	2,100	29
2,100	2,200	23
2,200	2,300	17

For the widow with one child, pension rates and income allowances are somewhat higher; and where there is more than one child, the monthly rate is increased by \$16 for each additional child.

To be eligible for this Nonservice-Connected Death Pension, the widow must meet the means test of the Veterans' Administration with the income allowances illustrated in the table above. Some 17 categories of income are excludable in making income determination under the program, including payments from RSFPP, payments from six months' death gratuity, 10 percent of other retirement benefits, etc. (Section 503, Title 38, U.S.C., as amended).

These Nonservice-Connected Death Pensions are paid to widows of veterans who served during various wars or armed conflicts and are set rates independent of the grade or years of service of the individual concerned. The wife of a thirty-year career man is entitled to the same benefit as the wife of the two-year veteran. This comes about because these benefits were designed as benefits for veterans and not as military career benefits. It will, therefore, be seen that for the older widow of a career man who has no other source of income or any appreciable estate, the pension will sometimes be less than the minimum required to meet her basic needs.

The Committee has, therefore, provided under Section 5 a program of minimum income guarantee which essentially will assure the military widow of an income of \$2,000 per year.

The VA means test provides an apparatus in existence for determining need. Therefore, the Committee bill provides that a widow whose annual income from all sources as determined by this VA means test (that is, Section 503, Title 38, U.S.C.) is less than \$1,400 a year, shall be paid an annuity by the Defense Department sufficient to bring her annual income up to \$1,400. The VA death pension to which she is then eligible (\$55 a month) will bring her total income up to the \$2,000 level.

COMMITTEE POSITION

The Committee on Armed Services, a quorum being present, approved the bill by a vote of 35-0.

An amendment to delete Section 4, providing for the attachment of retired pay, was defeated in Committee by a vote of 29-6.

DEPARTMENTAL POSITION

The legislation is supported by the Department of Defense; but the Department, in reporting its position on the bill, recommended a number of revisions to better achieve the objectives of the legislation. The Defense Department position is contained in the correspondence dated May 24, 1971, set forth below:

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., May 24, 1971.

HON. F. EDWARD HÉBERT,
Chairman, Committee on Armed Services, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 984, a bill to establish a Survivor Benefit Plan for retirees of the Uniformed Services.

The enclosure sets forth in detail our position on H.R. 984. We support and applaud its objectives, but believe they will be achieved best by enacting the substitute legislation described in the enclosure, instead of H.R. 984.

I am authorized to present this report as the Administration position on this subject. It has been carefully reviewed, and is concurred in by the Interagency Committee on Uniformed Services Retirement and Survivor Benefits of which I am chairman. The other members of the Committee are: Donald E. Johnson, Administrator of the Veterans Administration; Robert E. Hampton, Chairman of the Civil Service Commission; and James R. Schlesinger, Assistant Director of the Office of Management and Budget. I have also been advised by the Office of Management and Budget that passage of the substitute legislation would be consistent with the Administration's objectives.

Retirees of the Uniformed Services lack the protection available to Civil Service employees in the form of a survivor benefit plan in which the Government shares a substantial portion of the cost. Uniformed members need their pay to meet current expenses, and the rate of participation in the present Retired Serviceman's Family Protection Plan (RSFPP) is accordingly very low. Therefore, the void in family and widow's protection is critical.

Thanks to your initiative and the work of the Pike-Gubser Subcommittee, this subject is receiving attention which is long overdue. We are happy to reinforce your efforts with the enclosed recommendations.

Sincerely,

ROGER T. KELLEY.

Enclosure.

DESCRIPTION OF SUBSTITUTE LEGISLATION

Provisions of H.R. 984 retained in the substitute legislation

As in H.R. 984, the plan proposed in the substitute legislation will use as its foundation the social security benefits earned by a retiree during his years of active service. The plan will provide payments of up to 55% of a serviceman's retired pay:

To a widow raising a family of two or more children. In addition, the family will receive the social security family benefit.

To a widow under age 62, not raising a family and, therefore, not receiving a social security family benefit.

In general, these payments will provide benefits similar to those of the comparable Federal Civil Service Plan.

The plan also will:

Provide for the adjustment of plan payments when the cost of living index increases.

Permit present retirees to join during the first year after enactment.

Provide for a Department of Defense supplement to survivors of retirement-eligible personnel. This supplement will be paid in addition to Dependency and Indemnity Compensation (DIC) to insure that the survivor receives 55% of the retired pay that had been earned by the service member. This provision assures equity between retirement-eligible and retired personnel and eliminates a potential disincentive to service beyond initial retirement eligibility. Without the provision, the survivor of a retiree would, in many instances, receive a higher annuity than the survivor of an otherwise identical individual who continues in the active force.

Modifications to H.R. 984 contained in the substitute legislation

The Special Subcommittee on Survivor Benefits made the provisions of H.R. 984 comparable with those of the Federal Civil Service Plan whenever possible. The Administration endorses the principle of comparability. However, in applying that principle, some additional modifications to H.R. 984 are needed to take into account differences in the conditions of military service and Federal civilian employment. The most important difference is the effect of military early retirement. The physical requirements and the up-or-out practices used to insure retention of a relatively small number of military personnel for the available assignments mean that only a select few can be retained beyond 30 years of service. Since officers enter the military service at an average age of 23, and enlisted members at 19, military careers are normally completed more than a decade earlier than the careers of Federal civilian employees. This means that the typical military member retires at a relatively young age, with a young wife, and with minor children.

The major modifications in the substitute legislation, based on differences in conditions of service concern:

The method of combining the plan annuity with the social security benefit when an offset is required.

Two different social security benefits payable to a spouse require a plan offset in order to maintain the principle of comparability. One is the widow's benefit at age 62, and the other is the mother's benefit when there is one dependent child.

When the widow is age 62, one-half of the social security benefit attributable to military service is offset from the plan annuity. A one-half offset is justified in consideration of the following factors: (1) the total contributions paid by a member while in the service; (2) the level of survivor benefits earned through a member's service compared to his total retirement income earned by that service; (3) the level of survivor benefits payable to survivors of a member who retired for disability in one of the lower pay grades; and (4) the effect of successive employers using the same definition of the social security benefit attributable to employment with them.

When there is a widow and one child, the social security family benefit consists of separate payments for the mother and the child. The mother's benefit added to the 55% payment from the plan would provide a larger benefit than is paid to a comparable widow under the

Federal Civil Service Plan. This anomaly is eliminated by offsetting, from the plan payment, the amount of the social security mother's benefit attributable to service.

The social security survivor benefit attributable to a member's service is defined as the benefit that would be paid assuming that the member lived to age 65 and had no social security coverage except while in the service. This definition was developed after a thorough investigation of the operation of the social security system and is necessary to insure that the widow of every service retiree can receive up to 55% of his retired pay.

The definition, the methods of offsetting, and a procedure for adjusting the offset to reflect increases in social security benefits, are specified in the substitute legislation.

The provision that participation will be irrevocable after the member enters retirement.

Early retirement for service personnel justifies a modification of the irrevocability provision in H.R. 984. Therefore, the substitute legislation permits a retiree to discontinue coverage upon loss of the beneficiary prior to age 50. After a retiree reaches age 50, Uniformed Services and civil service retiree characteristics are sufficiently similar to make similarity between the governing rules appropriate.

The requirement that a survivor, eligible for benefits under both the plan and DIC, choose which one to receive.

If a survivor is required to choose between the benefit provided in H.R. 984 and the DIC benefit, it is possible that the choice will result in a benefit of less than 55% of retired pay. If the DIC payment is less than 55% of retired pay, the substitute legislation provides a plan payment sufficient to assure a continued benefit of 55%. If the plan payment is less than the benefit paid for by the member, the excess contributions are refunded to the survivor. When the DIC payment is equal to or more than 55% of retired pay, no plan supplement is required and all member contributions are refunded to the survivors.

Automatic transfer of benefits to children when a spouse dies or becomes ineligible.

The Federal Civil Service Survivor Plan does not provide for the automatic transfer of benefits to children. This provision is not necessary because benefits to children of civil service retirees are provided by a separate plan and are paid whether or not a retiree is enrolled in the survivor benefit plan. The social security family benefit paid to children of deceased service members is also independent of the plan proposed by H.R. 984. Accordingly, the principle of comparability can be met without the automatic transfer provision, and it is deleted in the substitute legislation. However, the substitute legislation does permit the enrollment of children under the insurable interest provisions when there is no eligible spouse, recognizing that many service members do have minor children when they retire as compared to civil service retirees who do not.

Post-retirement elections out of the new plan during a transitional period.

H.R. 984 makes participation in the survivor benefit plan automatic for all future retirees who are married at the time of retirement. However, the information and administration procedures required to carry

out its provisions may not become fully effective immediately. Accordingly, a transition period of up to six months has been included in the substitute legislation to permit those who retire during that period to review their need to participate in the plan.

In addition to those items already discussed, it is believed that the method of providing the guaranteed minimum income for present widows of retirees should be modified. H.R. 984 assures an annual income equal to the lowest DIC benefit (presently \$2,004) to the widows of service retirees who qualify for the Veterans Administration Non-service-Connected Death Pension. This same purpose can be achieved more efficiently, and without establishing a new category of excludable income for the VA pension plan, by providing a Department of Defense payment whenever the annual income of a present widow is less than \$1,400. This will guarantee that widows of service retirees receive no less than \$2,012 in annual income. The substitute legislation reflects this modification.

Finally, a number of amendments are required by recent changes to the Federal Civil Service Plan (P.L. 91-658 enacted on January 8, 1971) and a number of other minor modifications are necessary to assure correct application of the law. These modifications are contained in the substitute legislation which is enclosed.

Provision of H.R. 984 not contained in the substitute legislation

The Administration is opposed to the provision in H.R. 984 that would permit attachment of retired or retainer pay to comply with a court order in conjunction with divorce or separation proceedings. Although making military retired pay attachable is an attractive and expedient method for resolving problems of a very small minority of retiree dependents, it is believed that the provision is extraneous to a survivor benefit bill. If there is sufficient reason to attach retired pay, the same reason undoubtedly exists for an attachment provision applicable to other Federal pays and annuities. Accordingly, the broader subject of attachment of all Federal pays and annuities for support of dependents may well deserve Congressional attention as a matter in its own right. The substitute legislation does not contain the attachment provision.

Cost and budget data

It is estimated that at least 85% of all retirees will participate in the new plan. As a result, reductions from the retired pay of participants will, during the early years, more than offset the payments to survivors and will result in budget savings (negative disbursements).

The estimated net disbursements in military retired pay are shown below:

[In millions of dollars]

Fiscal year	Annual net disbursements	
	No pay or price increases	Pay and price increases
1972.....	-156	-156
1973.....	-152	-158
1974.....	-148	-161
1975.....	-143	-166
1980.....	-84	-177
1990.....	178	-80
2000.....	517	138

The "no pay or price increase" figures are based on current basic pay rates and assume no increase in the present Consumer Price Index or social security benefit levels. The "pay and price increase" figures are based on basic pay rates increasing 5 percent per year and Consumer Price Index and social security benefit levels increasing 1.5 percent per year.

The cost of providing benefits to present widows is not shown in the above table. The first year cost of providing these benefits will probably be no more than \$47 million. The cost of this provision will remain approximately level in the near term, and then decrease and eventually reach zero (sometime after the year 2000).

The cost of the payment of the difference between 55 percent of a member's retired pay and DIC benefits to survivors of retirement-eligible members who die while on active duty is also not shown in the above table. This provision would result in a cost the first year of approximately \$725,000. This cost would increase each year in the near future at approximately the same amount.

COMMITTEE ACTION ON DEFENSE DEPARTMENT RECOMMENDATIONS

As indicated earlier, the Department of Defense supported the need for the legislation and the principal features of the Committee's bill but recommended some modifications. The Committee on Armed Services gave very careful consideration to all of the recommendations of the Department of Defense.

The Committee accepted the following modifications recommended by the Department. Several of these are designed to more clearly carry out the intent of the Committee:

1. Provide eligibility for a foster child. The bill originally did not include a foster child as an eligible dependent child. The Civil Service annuity program does not recognize foster children. The Defense Department proposed making a foster child eligible to be consistent with the treatment of foster children in other military programs. Under the recommendation of the Department, as accepted by the Committee, a foster child, to be eligible, must live with the retiree to whom the Survivor Benefit Plan applies in a regular parent-child relationship. In addition, the foster child must reside at the time of the death of the person to whom the Survivor Benefit Plan applies with that person, receive over one-half of his support from that person and not be being cared for under a contract with a social agency.

2. Provide notification to the spouse if a new retiree elects not to participate in the program "at the maximum level." As explained earlier, the bill provided for notification to a spouse if a retiree elected not to participate in the Survivor Benefit Plan in line with the desire to see that the spouse is aware of the implications of an election not to participate and to be sure that this valuable benefit is not lost to some families because of neglect or misunderstanding. The recommended Defense Department language would modify the bill to provide notification anytime a retiree elected to participate at less than the maximum level—that is, 55 percent of retired pay. This change more clearly carries out the intent of the Committee.

3. Clarify the eligibility of a "recognized natural child." The bill had provided eligibility as a dependent child for a "recognized natural

child" who lived with the applicable retiree in a regular parent-child relationship and "who on the date of the death of that person was living in the United States, Puerto Rico, or a possession of the United States." The Department of Defense recommended deletion of the geographic requirement. The Department pointed out that the geographic limitation in the original language might have prevented payment of benefits to a recognized natural child who was, in fact, living with the retiree in a regular parent-child relationship if the parent happened to be living overseas at the time of death. The Committee, therefore, accepted the Defense Department recommendation which deleted the requirement for the recognized natural child to be living in the United States, Puerto Rico or a possession of the United States.

4. Clarify the application to survivors of retired men who died of service-connected causes where the survivor may thus receive DIC plus an additional payment from the new program. The original language of the bill had provided that when the retiree died of service-connected causes and the surviving spouse or dependent child is thus entitled to DIC, the survivor could elect to receive either the DIC or the annuity under the bill; and if DIC was elected, a refund would be made of the retired pay deductions under the bill's program. The bill had provided that an annuity under the plan could not be paid if DIC was chosen. The Defense Department suggested a modification which provides for automatically paying the DIC to the survivor and, in cases where the annuity under the bill's plan would exceed DIC, to provide a supplemental payment from the Department of Defense to make up the difference. The survivor will receive a refund of any portion of the retired pay deduction which exceeds the percentage of total annuity that is based on military retired pay. The survivor would be spared the necessity of making a choice and thus situations would be avoided where a survivor might unknowingly choose the less beneficial plan. The Defense Department's suggested modification appears to accomplish the intention of the Committee in more desirable language and was, therefore, adopted.

5. Provide that in the case of a widow with one child an amount equal to the portion of the Social Security benefit which is payable for the mother would be deducted from the annuity. The original bill did not provide any reductions of benefits for a widow with one child. The partial deduction for the widow with one child is to make the total income of the widow and child in the military program comparable to what is paid under the Civil Service system and was, therefore, accepted by the Committee in line with its principle of achieving comparability with the Civil Service system whenever feasible and desirable. This provision is explained in more detail earlier in this report.

6. Provide a one-year transition period allowing those retiring within six months of the enactment of the bill six months in which to elect to participate. The original bill contained no such provision. This is a one-time delay so that those who are retiring at the time the bill is enacted would not have to automatically join the plan or irrevocably elect out on short notice. This modification appeared to be desirable in such a complex program and was adopted by the Committee.

7. Provide new language for Section 5 (minimum income guarantee for widows) which will make it easier to administer and which removes age and disability restrictions. Section 5 of the original bill provided for the payment by the military department of an annuity to the current widow if she were at least 62 years of age or permanently and totally disabled and provided that the annuity would be equal to the minimum DIC less the amount of any compensation or pension to which the widow was eligible under the Veterans' Administration Nonservice-Connected Death Pension program and less any benefit she would be eligible for under the Social Security program. The modification recommended by the Department of Defense would delete the age-62 and physical-disability requirements since the widow would already be determined to be in a condition of need because of meeting the means test of the VA Nonservice-Connected Death Pension program. The Defense Department modification also changes the payment procedure to provide that when the annual income from all sources, as determined by the VA means test, is less than \$1,400, the widow would be paid an annuity sufficient to bring her income from all sources, exclusive of VA Nonservice-Connected Death Pension, up to \$1,400 a year. When her income is thus raised to \$1,400 a year, the Nonservice-Connected Death Pension she is then eligible for from VA would raise her total income to \$2,000 a year, which is the equivalent of the minimum DIC. The substitute language, therefore, carries out the original intention of the Committee in a manner that would be easier to administer. The Defense Department's proposed language was accepted.

The Committee accepted three additional changes brought to its attention by the Department of Defense which were designed to conform with changes made in the Civil Service system since the Committee's inquiry of last year. These include:

Providing widowers equal eligibility with widows;

Providing that a retiree who marries subsequent to retirement may join the plan and his survivors will be eligible for benefits providing the spouse has been married to him at least two years at the time of death of the retiree or that issue has resulted from the marriage. The bill considered by the Committee, H.R. 984, had originally provided that the retiree who marries after retirement could join the plan only if he paid back an amount equivalent to what the deductions would have been if he joined at the time of retirement, plus interest. At the time the bill was originally introduced this was comparable to the Civil Service program.

Providing that a child who is attending school and whose eligibility therefore extends to his 22nd birthday shall be presumed to become 22 on July 1 following his 22nd birthday if the birthday occurs between August 31 and July 1 so that benefits will continue until he completes that year of school. The original version of the bill had terminated benefits on the date one, in fact, becomes 22.

These three provisions above conform with changes that were made in the Civil Service program by Public Law 91-658.

In two instances the Committee rejected recommendations by the Department of Defense.

The first would have limited benefits only to widows and required any coverage for dependent children be under the more expensive

insurable-interest formula. While the Committee appreciates that this approach would have achieved comparability with the Civil Service system, the Committee did not believe it was feasible and desirable in view of the differing patterns of military careers, the longer period of retirement during which military personnel will have minor children, and the pattern of past practices such as in the RSFPP.

The second recommendation rejected would have provided withdrawal from the plan if the retiree's spouse dies before the retiree reaches age 50. This proposal would have left the election to participate irrevocable for a retiree whose spouse dies after the retiree was past age 50. The Committee could not accept as justified such an arbitrary age cutoff point and, therefore, retained the language of the original bill which makes an election into the plan irrevocable.

As regards the integration of Social Security benefits with the military retirement annuity when the surviving widow reaches age 62, the Committee accepted part of the Defense Department's recommendation.

The Department supported the principle of integration of benefits.

The bill considered by the Committee, H.R. 984, in its original form was silent on the formula to be used in determining the amount of a military retiree's Social Security which is attributable to his active-duty service. The Committee accepted the formula recommended by the Defense Department. This is explained in detail earlier in the report. As previously stated, the formula adopted is the most liberal method for calculating the Social Security benefit attributable to active military service.

In addition, however, the Department of Defense recommended that the offset at age 62 be only 50 percent of the widow's Social Security benefit attributable to her husband's military service rather than the full amount. The Committee rejected this proposal as unjustified. This is the one area where there will eventually be a significant cost difference between the Defense Department recommendation and the Committee bill. Beginning sometime after the year 2000, the cost would be approximately \$240 million more per year following the Defense recommendation than will be experienced under the terms of the Committee's bill, according to present dynamic estimates.

In one instance the Committee modified the bill after hearing Defense's proposals, but not in the manner recommended by the Department.

Retired military personnel who subsequently work under Social Security may waive a portion of their retired pay and count the military time in the multiplier to determine their Civil Service retirement pay. The language of H.R. 984, as introduced, provided that a person who had in effect a waiver of retired pay would be eligible for coverage under the plan if he deposited in the Treasury an amount equal to the amount that would have been deducted from his retired pay if he had been drawing it. The bill provided, however, that if such a person waived retired pay to increase the benefits to which his survivor might become entitled under the Civil Service survivor annuity plan, his survivors could not receive an annuity under the bill. The legislation, therefore, in order to prevent entitlement to two annuities, based on the same periods of service, denied entitlement under the bill for any period a waiver was in effect.

The Department of Defense supported the principles of not allowing two annuities but pointed out a retiree under the bill might be in the position of having to pay irrevocably for a benefit which his survivors may never receive. The Department, therefore, proposed substitute language which would have provided suspension of the deposits into the Treasury at any time that the retiree has waived his retired or retainer pay to increase benefits under the Civil Service annuity system. The Department of Defense stressed the belief that since survivors are not covered during the period of waiver, the retiree should not be required to contribute to the program.

Under the Defense Department language, however, the retiree would be in the position of being permitted to rejoin the program at an advanced age. Since he is already drawing increased retired pay, partly as a result of his military service, the Committee did not believe he should receive an advantage in his options over other retirees.

The Committee, therefore, adopted the present language in the bill. It continues to require that a retiree who waives his military retired pay must make contributions to the Survivor Benefit Plan equivalent to what his retired pay deductions for such coverage would be if he did not have the waiver in effect. Such retirees, when they first attain eligibility for Social Security benefits, at age 62, must withdraw their years of military service from calculations under Civil Service retirement for any period for which Social Security benefits are received. At that point, when he begins receiving his military retired pay again, he will wish to have in force the survivor annuity options of his military retired pay.

The Committee recognized, however, that should the retiree die during the time his waiver was in effect and his survivors received survivor annuities from the Civil Service system, there would, in fact, be no benefit to his survivor as a result of the contribution made to the military Survivor Benefit Plan. The language of the bill also provides, therefore, that if no annuity is payable under the plan, the survivors will receive a refund of the retiree's contributions.

Finally, the Department of Defense opposed a provision contained in the original version of H.R. 984 to provide for the attachment of retired or retainer pay. This is discussed earlier in the report.

FISCAL DATA

Three provisions in the bill contribute to the costs: the program of minimum income guarantee for present widows (section 5), the supplemental payment to survivors of retirement-eligible members who die while on active duty, and the new, permanent Survivor Benefit Plan created by the bill.

For a variety of reasons it is impossible to provide precise cost estimates. For the new Survivor Benefit Plan, cost estimates will vary depending on the assumed rate of participation and on assumptions made as regards basic-pay and retired-pay increases and Social Security increases in the years ahead. As for the program for present widows, the cost estimate given here is the upper limit of a range of estimates. Since it is not possible to determine exactly how many widows will be in need of assistance, or how much will be required in each case, it is not possible to give firm cost projections.

For reasons that will be explained below, there will be no net increase in budgetary requirements during the first fiscal year as a result of enactment of the bill.

Five-year cost projection

In compliance with Section 7 of Rule 13 of the House of Representatives, it can be stated that there will be no net increase in budgetary requirements during the first five years after enactment of the bill.

It is estimated that the annual cost of providing benefits to present widows under Section 5 of the bill will be no more than \$47 million a year for the first five years of the program. After approximately five years the cost will decrease annually as eligible widows die, and the cost will eventually reach zero sometime after the year 2000 when the last participating widow dies.

The provision in the bill to pay the difference between 55 percent of a member's retired pay and DIC benefits to survivors of retirement-eligible members who die on active duty will result in an estimated cost the first year of \$725,000. The cost will increase by a like amount each year. (This estimate derives from the fact that approximately 650 members who are eligible to retire die each year while still on active duty.) The cost in the fifth year, therefore, will be \$3,625,000.

The new permanent Survivor Benefit Plan will not result in a net increase in budgetary requirements for some years. The reason is that for many years the reductions from retired pay will exceed the cost of benefits paid to survivors. Accentuating this development is the fact that all present retirees are eligible for the program and when they join, will immediately experience retired pay deductions. There were an estimated 823,261 military retirees as of the end of fiscal year 1971.

Using the most likely cost estimates, the following table gives the net five-year cost of the bill. (A negative number indicates a "savings" to the government because reductions in retired pay exceed benefits paid to survivors.)

NET 5-YEAR COST OF THE BILL

Fiscal year	Sec. 5	Active-duty DIC supplement	Survivor benefit plan	Net cost
1972.....	\$47,000,000	\$725,000	-\$156,010,000	-\$108,285,000
1973.....	47,000,000	1,450,000	-159,010,000	-110,560,000
1974.....	47,000,000	2,175,000	-183,550,000	-134,375,000
1975.....	47,000,000	2,900,000	-170,130,000	-120,230,000
1976.....	47,000,000	3,625,000	-176,330,000	-125,715,000

Long-range cost projection

The most likely cost estimates indicate the permanent Survivor Benefit Plan will be in a condition of negative disbursement until after the year 2005.

It should be understood that making projections this far in advance is extremely difficult and dependent upon a number of factors that are not known. Also, it should be understood that while the heavy retired pay deductions offset any cost for a good number of years under the bill, to the extent that retired-pay deductions are made now, future obligations are generated for the program. In other words, if a greater number of retirees join the plan, the retired-pay deductions for the early years will be increased and the budget "savings" will be higher;

however, the greater the number of retirees who join the plan, the higher the eventual cost to the government will be in the payout of benefits to survivors.

The following table provides an estimate of the cost of the program through the year 2000:

ANNUAL COSTS ASSOCIATED WITH PROVIDING SURVIVOR BENEFITS UNDER H.R. 10670

PARTICIPATION RATES 85 PERCENT

[In millions of dollars]

Fiscal year	Reduction in members retired pay			Survivor benefits			Total annual benefits paid	Annual net dis-bursement
	Amount of reduction from—		Total annual amount of reduction	Benefits paid to survivors of—				
	Present retirees	Future retirees		Past partici-pants	Present partici-pants	Future partici-pants		
1972	168.47	9.10	177.57	12.38	9.00	0.18	21.56	—156.01
1973	170.92	28.86	199.78	12.08	27.70	.99	40.77	—159.01
1974	173.23	52.30	225.53	11.74	47.49	2.75	61.98	—163.55
1975	175.51	80.18	255.69	11.41	68.40	5.75	85.56	—170.13
1976	177.60	110.53	288.13	11.03	90.50	10.27	111.80	—176.33
1977	179.50	142.07	321.57	10.66	113.90	16.31	140.87	—180.70
1978	181.22	175.98	357.20	10.25	138.99	23.88	173.12	—184.08
1979	182.74	211.78	394.52	9.85	164.98	33.61	208.44	—186.08
1980	184.06	249.24	433.30	9.42	191.67	45.25	246.34	—186.96
1981	185.17	288.58	473.75	9.04	218.46	59.63	287.13	—186.62
1982	186.23	328.40	514.63	8.63	243.33	77.58	329.54	—185.09
1983	187.04	370.24	557.28	8.24	268.36	97.88	374.48	—182.80
1984	187.48	415.87	603.35	7.85	291.71	121.54	421.10	—182.25
1985	187.52	463.77	651.29	7.48	315.70	148.79	471.97	—179.32
1986	187.22	512.95	700.17	7.10	339.09	179.43	525.62	—174.55
1987	186.59	565.74	752.33	6.72	360.39	213.21	580.32	—172.01
1988	185.63	621.70	807.33	6.36	381.28	251.39	639.03	—168.30
1989	184.18	679.18	863.36	6.00	400.53	293.65	700.18	—163.18
1990	182.25	738.44	920.69	5.64	418.72	340.05	764.41	—156.28
1991	179.83	800.60	980.43	5.30	434.24	391.02	830.56	—149.87
1992	176.98	867.61	1,044.59	4.96	447.16	446.13	898.25	—146.34
1993	173.85	939.25	1,113.10	4.62	458.96	506.73	970.31	—142.79
1994	170.18	1,014.74	1,184.92	4.31	471.37	572.83	1,048.51	—136.41
1995	165.99	1,094.05	1,260.04	4.01	483.16	642.54	1,129.71	—130.33
1996	161.28	1,178.59	1,339.87	3.71	498.82	713.78	1,216.31	—123.56
1997	156.08	1,268.64	1,424.72	3.22	512.24	793.94	1,309.40	—115.32
1998	150.39	1,363.66	1,514.05	3.14	523.03	877.69	1,403.86	—110.19
1999	144.26	1,463.45	1,607.71	2.88	530.87	966.76	1,500.51	—107.20
2000	137.72	1,568.17	1,705.89	2.62	535.45	1,064.15	1,602.22	—103.67
2001	130.82	1,679.10	1,809.92	2.36	536.51	1,169.96	1,708.83	—101.09
Total..	5,199.94	19,282.77	24,482.71	213.01	9,522.01	10,067.67	19,802.69	—4,680.02

As indicated, the table assumes an 85-percent participation rate. This is similar to the participation in the Civil Service program, and the Committee believes that in view of the outstanding features of the plan the expectation of 85 percent is entirely reasonable.

The cost estimates in the table are dynamic in nature—that is, they assume a 5-percent annual increase in basic pay and a 1½-percent annual increase in the Consumer Price Index. They also assume a 1½-percent annual increase in Social Security benefit levels.

Increases in retired pay under present law are based on changes in the Consumer Price Index (CPI). To the extent that the CPI is held below the projected levels and basic pay increases and Social Security benefits are held below the percentages projected here, the budget “savings” would be reduced and the need for annual disbursements would come at an earlier point in time.

In future years the number of survivors will increase rapidly as the older retirees begin to die.

Using the assumptions of the above table, the estimated cost after the year 2000 will be as follows:

Annual cost associated with the survivor benefit plan after the year 2000

Fiscal year:	Annual net disbursement
2005	—\$43,000,000
2010	94,000,000
2015	303,000,000
2020	553,000,000
2025	959,000,000
2030	1,290,000,000

For the purposes of the tables above, it is assumed that 50 percent of children continue in school after age 18. Based on data available regarding military dependents, it is assumed that 9 percent of retirees electing survivor benefits will have orphaned children. The calculations were made on an active-duty force of 2.6 million and no changes in strength were projected.

While the cost projections for pay and retired-pay increases may seem high, they are in line with the experience of the last seven years. However, it is simply true that to the extent inflation is controlled, the point where payout of annuities exceed retired-pay deductions will come at an earlier point in time.

For purposes of comparison, the following table illustrates what cost projections would be through the year 2000 with static assumptions—that is, with no basic or retired-pay increases calculated and no increases assumed in Social Security benefits:

ANNUAL STATIC COSTS ASSOCIATED WITH PROVIDING SURVIVOR BENEFITS UNDER H.R. 10670

PARTICIPATION RATES 85 PERCENT

[In millions of dollars]

Fiscal year	Reduction in members retired pay			Survivor benefits				
	Amount of reduction from—		Total annual amount of reduction	Benefits paid to survivors of—			Total annual benefits paid	Annual net disbursements
	Present retirees	Future retirees		Past participants	Present participants	Future participants		
1972	168.47	9.10	177.57	12.38	9.11	0.18	21.67	—155.90
1973	166.05	27.38	193.43	12.08	27.50	.98	40.56	—152.87
1974	163.49	46.73	210.22	11.74	46.28	2.66	60.68	—149.54
1975	160.79	67.43	228.22	11.41	65.39	5.40	82.20	—146.02
1976	157.95	87.69	245.64	11.03	84.86	9.35	105.24	—140.40
1977	154.98	106.53	261.51	10.66	104.69	14.45	129.80	—131.71
1978	151.85	124.67	276.52	10.25	125.10	20.60	155.95	—120.57
1979	148.59	142.00	290.59	9.85	145.46	28.14	183.45	—107.14
1980	145.18	158.59	303.77	9.42	165.67	36.83	211.92	—91.85
1981	141.63	174.60	316.23	9.04	185.19	47.11	241.34	—74.89
1982	137.94	189.16	327.10	8.63	202.52	59.43	270.58	—56.52
1983	134.12	202.90	337.02	8.24	219.21	72.81	300.26	—36.76
1984	130.15	216.64	346.79	7.85	233.83	87.81	329.49	—17.30
1985	126.06	229.77	355.83	7.48	248.34	104.43	360.25	4.42
1986	121.83	241.98	363.81	7.10	261.73	122.41	391.24	27.43
1987	117.49	254.06	371.55	6.72	272.85	141.27	420.84	49.29
1988	113.04	265.67	378.71	6.36	283.07	161.78	451.21	72.50
1989	108.48	276.17	384.65	6.00	291.55	183.56	481.11	96.46
1990	103.82	285.80	389.62	5.64	298.78	206.46	510.88	121.26
1991	99.09	294.93	394.02	5.30	303.64	230.56	539.50	145.48
1992	94.28	304.02	398.30	4.96	306.30	255.21	566.47	168.17
1993	89.42	312.98	402.40	4.62	307.91	281.16	593.69	191.29
1994	84.51	321.50	406.01	4.31	309.73	308.15	622.19	216.18
1995	79.59	329.54	409.13	4.01	310.90	334.61	649.52	240.39
1996	74.66	337.37	412.03	3.71	314.51	358.96	677.18	265.15
1997	69.75	345.01	414.76	3.22	316.43	385.80	705.45	290.69
1998	64.87	352.23	417.10	3.14	316.53	411.37	731.04	313.94
1999	60.06	358.97	419.03	2.88	314.71	436.46	754.05	335.02
2000	55.34	365.24	420.58	2.62	310.92	462.73	776.27	355.69
2001	50.72	371.25	421.97	2.36	335.12	490.03	797.51	375.54
Total	3,474.20	6,799.91	10,274.11	213.01	6,687.83	5,260.70	12,161.54	1,887.43

SECTIONAL ANALYSIS

Section 1 of the bill contains the enacting clause and amends chapter 73 of title 10 United States Code by adding new sections 1447-1452. The proposed new sections establish a Survivor Benefit Plan for retired military personnel that supersedes the present Retired Serviceman's Family Protection Plan contained in the present chapter 73 (section 1431-1446) of title 10 United States Code. Current sections 1431-1446 of chapter 73 will not apply to persons who initially become entitled to retired or retainer pay after the effective date of the proposed bill; however, current chapter 73 is not repealed, since the rights of persons already retired and their survivors will in some instances continue to be governed by those provisions.

The following new sections are added to title 10, United States Code immediately following section 1446.

Section 1447. Definitions

This proposed new section provides definitions for use in proposed new sections 1447-1452 of this title.

Section 1448. Application of plan

Subsection (a).—This proposed new subsection provides that the plan applies to every married person or other person who has a dependent child when he becomes entitled to retired or retainer pay unless he elects not to participate before the first day of eligibility for that pay. An election not to participate is irrevocable after entitlement to retired or retainer pay. When an unmarried nonparticipating member marries, he may, within one year of the marriage, advise the Secretary concerned of an election to participate. Such an election is irrevocable. The election is effective the first day of the month after receipt by the Secretary. An election to participate at less than the maximum authorized requires notification of the spouse.

Subsection (b).—A person who is unmarried on the date he becomes entitled to retired or retainer pay may provide an annuity to a natural person with an insurable interest.

Subsection (c).—A person removed from the temporary disability retired list ceases to participate in the plan when he is no longer entitled to retired pay. A member transferred from the temporary disability retired list to the permanent disability retired list continues in the plan subject to changes in the base amount (see proposed new section 1447(1)(A)).

Subsection (d).—Upon the death of a member of an armed force serving on active duty who has completed the minimum service required for eligibility for retired or retainer pay, whose spouse is eligible for a Dependency and Indemnity Compensation payment from the Veterans Administration which is less than the maximum annuity under the proposed plan, the Secretary concerned shall pay to the spouse an annuity equal to the difference between the two payments.

Section 1449. Payment of annuity: beneficiaries is a proposed new section which provides for the payment of annuities under the new plan, lists the order of priority for payment of the annuity among the several alternative categories of beneficiaries, provides the rules governing initiation, termination, reductions or changes in annuities and changes in beneficiaries, and restricts legal process against the annuity.

Subsection (a) provides that when a participant in the plan dies, the monthly annuity will be paid as follows:

- (1) to the eligible widow or widower;
- (2) if there is no eligible widow or widower, to the surviving dependent children in equal shares, unless the surviving dependent child or children are residing with the ineligible widow or widower;
- (3) if there is no eligible surviving spouse or child, then to the natural person with an insurable interest designated by the participant at the time of retirement.

Subsection (b) provides that annuities under the plan terminate effective on the first day of the month in which eligibility is lost. Remarriage of a spouse beneficiary at or after age 60 does not affect the spouse's continued eligibility for an annuity. Remarriage before age 60 will cause termination of the annuity; but if that remarriage is terminated by death, annulment, or divorce, the annuity will be reinstated on the first day of the month in which the remarriage is terminated. If the widow or widower is also eligible for an annuity under the plan based on the marriage which was terminated, the widow or widower cannot receive both annuities and must elect which to receive.

Subsection (c) relates to the situation in which, when the participant dies, the widow or widower is eligible for Dependency and Indemnity Compensation. In such a case subsection (c) provides that the payment under the plan will be only the amount, if any, by which the annuity payable under the plan exceeds the Dependency and Indemnity Compensation.

Subsection (d) provides that if, upon the death of a participant, he had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of Chapter 83 of title 5, United States Code; that is, for the purpose of using military service toward Civil Service retirement, an annuity under this section shall not be paid.

Subsection (e) provides that if no annuity is payable under this section because of subsections (c) and (d) of this section, any amount deducted from the retired or retainer pay because of participation in the plan shall be refunded to the widow or widower. When, under subsection (c), part of the annuity is payable, the amount the participant's retired or retainer pay would have been reduced to provide that part of the annuity will be calculated, and the amount by which the retired or retainer pay was reduced in excess of that recalculated amount will be refunded to the widow or widower.

Subsection (f) provides that a person who was not married at the time of retirement and who designated a person with an insurable interest as beneficiary, may, if he remarries, change his election to provide an annuity for his spouse.

Subsection (g) bars changes in elections except as authorized in subsection (e) of this section.

Subsection (h) provides that except as provided in section 1450, payments under section 1449 are in addition to any other payment to which the beneficiary is entitled under any other law, and provides that the annuity will be considered an income under all laws administered by the Veterans' Administration.

Subsection (i) exempts annuities payable under the plan from legal process such as execution, levy, attachment, and garnishment.

Section 1450. Amount of Annuity is a proposed new section which specifies the amount of annuity payable under the Survivor Benefit Plan, authorized by the proposed new sections of chapter 73, to the widow, widower, or dependent child of the retiree as the case might be, and prescribes the reductions in the amount of that annuity under certain circumstances when social security benefits may be payable to the widow or widower at age 62 or to a widow with one dependent child. *Subsection (a)* of the proposed new section 1450 provides that the annuity authorized for the widow, widower, or dependent child, as the case might be, is 55 percent of the base amount as defined in the proposed new section 1447 as added by this section of the bill. When the eligible widow has one dependent child, the monthly annuity payable under the Plan is reduced by an amount equal to the social security mother's benefit, if any, to which she is entitled based solely on the deceased retiree's uniformed service, and calculated on the assumption he lived until age 65. Any amount of the mother's benefit which is attributable to the deceased retiree's nonmilitary employment or which is payable because there is more than one dependent child does not influence the reduction. When the widow or widower as the case might be attains age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity under the Plan is reduced by an amount equal to the social security survivorship benefit, if any, to which the widow or widower is entitled, based solely on the deceased retiree's uniformed service and calculated on the assumption that the retiree lived until age 65. This reduction from the annuity under the Plan is required even though the social security benefit to the widow or widower has been offset pursuant to section 403 of title 42 because of wages earned in employment covered by the Social Security system.

Subsection (b) prescribes the formula for computing the survivor annuity to a person designated as a beneficiary under the insurable interest provisions of the proposed new subsection 1448(b). The amount of the benefit is 55 percent of the retired or retainer pay of the participant after the retired or retainer pay has been reduced by the reduction provided in the second sentence of the proposed new subsection 1451.

The proposed new *subsection (c)* prescribes that annuities payable under the Plan will be increased at the same time, and by the same percentage as military retired pay is increased under the formula prescribed in current 10 U.S.C. 1401a for increasing such pay based on the Consumer Price Index.

Section 1451. Reduction in retired or retainer pay is a new section of title 10 which prescribes the formula for determining the amount of reduction required in a retiree's retired or retainer pay to provide an annuity to the spouse, dependent child or designated person with an insurable interest as the case might be. The cost of providing an annuity for a spouse or dependent child under the proposed new section 1448(a) is 21½ percent of the first \$300 of the "base amount" as defined in proposed new section 1447 plus 10 percent of the remainder of that base amount. The cost of providing an annuity to a natural person with an insurable interest in the retiree is 10 percent of the member's retired or retainer pay plus 5 percent of the retired or retainer pay for each full 5 years the designated natural person is younger than the retiree. However, the maximum reduction may not exceed 40 percent of the member's retired or retainer pay.

During any period that a retiree is not receiving retired or retainer pay other than during a period he is serving on active duty, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

Section 1452. Regulations require the President to prescribe regulations to carry out the provisions of proposed new sections 1447-1452 of title 10 United States Code and further require those regulations to be as uniform as is practicable for all the armed forces. The proposed section also requires that whenever the member elects to participate in the plan at less than the maximum amount, the member and his spouse must, before the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections. Section 1452 also requires establishment of procedures for depositing by the retiree participant who for some reason is not receiving his retired pay (or is not receiving a sufficient amount of retired or retainer pay to cover his required contributions) the required amounts with the Treasury. It is the intent of this particular provision to require regular and frequent deposits of the required amounts.

Section 2 is a technical section that amends the analysis of subtitle A and Part II of subtitle A of title 10 United States Code to reflect the redesignation of the chapter title to read "*Chapter 73. Survivor Benefit Plan.*" (See section 1 above.)

Section 3 is a transition section.

Subsection (a) provides that any person initially entitled to retired or retainer pay on or after the date of enactment of the Act is covered by section 1. An earlier election to participate in the suspended Retired Serviceman's Family Protection Plan (RSFPP) by a member not yet retired is cancelled. A married person or a person with a dependent child who becomes entitled to retired or retainer pay within 180 days after date of enactment of this Act may, within 180 days after becoming so entitled, elect not to participate. This provision will assist in the transition to the new plan in the case of members who retire shortly after enactment of the plan.

Subsection (b) provides that a person entitled to retired or retainer pay on the date of enactment of this Act has one year to elect to participate in the new plan. Participation in RSFPP may be continued provided the total of the annuities under both plans does not exceed 100 percent of retired or retainer pay. Participation in RSFPP may be terminated without regard to current section 1436(b) of title 10, U.S.C. That section currently requires contributions to be continued for six months after the member elects to discontinue participation in the plan. When an election is made to participate.

Section 2 is a technical section that amends the analysis of subtitle A and Part II of subtitle A of title 10 United States Code to reflect the redesignation of the chapter title to read "*Chapter 73. Survivor Benefit Plan.*" (See section 1 above.)

Section 3 is a transition section.

Subsection (a) provides that any person initially entitled to retired or retainer pay on or after the date of enactment of the Act is covered by section 1. An earlier election to participate in the suspended Retired Serviceman's Family Protection Plan (RSFPP) by a member not yet retired is cancelled. A married person or a person with a dependent child who becomes entitled to retired or retainer pay within 180 days after date of enactment of this Act may, within 180 days

after becoming so entitled, elect not to participate. This provision will assist in the transition to the new plan in the case of members who retire shortly after enactment of the plan.

Subsection (b) provides that a person entitled to retired or retainer pay on the date of enactment of this Act has one year to elect to participate in the new plan. Participation in RSFPP may be continued provided the total of the annuities under both plans does not exceed 100 percent of retired or retainer pay. Participation in RSFPP may be terminated without regard to current section 1436(b) of title 10, U.S.C. That section currently requires contributions to be continued for six months after the member elects to discontinue participation in the plan. When an election is made to participate in the plan and terminate participation in RSFPP, there will be no refund of deductions from retired or retainer pay previously made or of any payments thereunder.

Subsection (c) provides that for those persons who do not elect to participate in the proposed plan and continue participation under sections 1431 or 1432 of title 10, chapter 73 of title 10 U.S.C., continues to apply, other than last two sentences of section 1436(a), section 1443, and section 1444(b).

Under *subsection (d)*, the "base amount" of a person under chapter 73 of title 10 U.S.C. is the amount of monthly retired or retainer pay to which he was entitled on the date of enactment of this Act or to which he later became entitled by being advanced on the retired list or performing active duty or when transferred to the permanent disability retired list from the temporary disability retired list, as increased under section 1401a of title 10.

Section 4 amends chapter 71 of title 10, U.S.C. to provide for attachment of retired or retainer pay to comply with a court order. The deduction may not exceed 50 percent of the retired or retainer pay.

Section 5 provides a payment to widows unable to obtain coverage under section 1 or section 3.

Subsection (a) provides that a widow, or one who becomes a widow within one calendar year of the date of enactment of this Act, of a person entitled to retired or retainer pay when he died whose annual income from all sources determined under section 503 of title 38 exclusive of pension under chapter 15 of title 38, is less than \$1400.00 shall be paid an annuity by the Secretary concerned unless she is eligible for an annuity under section 1 of this Act.

Subsection (b). The amount of the annuity referred to in subsection (a) of this section will be an amount which when added to other income (except income specifically excluded under 38 U.S.C. 503) equals \$1400 per year.

Section 6 amends the assimilation provisions which extend the applicability of chapter 73 to the National Oceanic and Atmospheric Administration and to the Commissioned Officers Corps of the Public Health Service to reflect the amended chapter title.

Section 7 amends sections 415(g)(M) and 503(17) of Title 38, United States Code, to continue the RSFPP annuities as excludable income under payment made by the Veterans' Administration. Payments under the new Survivor Benefit Plan created by H.R. 10670 would not be excludable income under programs administered by the Veterans' Administration.

ADDITIONAL VIEWS OF HON. CHARLES S. GUBSER
REGARDING H.R. 984

As the original author of the Fleet Reserve Association proposal for a "widows' equity" program, I am basically pleased with H.R. 10670. It is an improved version of the original proposal which substantially retains and enlarges its basic benefits. It is hallmark legislation which will do much to make military service attractive as a career and eventually achieve our national desire to eliminate the draft.

I do seriously regret one tangential provision which was written into the bill in Subcommittee. This is Section 4 which provides that 50 percent of retired military pay can be attached to comply with a state or local court order in favor of a spouse, former spouse, or children.

It is significant to note that the sentiment in Subcommittee was six to five against including the attachment provision, but, due to the unavoidable absence of one member, a motion to delete the section lost on a tie vote of five to five.

There may be equity in such a provision, but I believe this bill is the wrong vehicle for establishing the principle. It should be considered in separate legislation which would apply equally to all federal employees, both military and civilian. If Section 4 remains in the bill, we would find an incongruous situation where military retired pay could be attached while active duty pay could not. It is not sufficient to argue that a man on active duty can be influenced by his superior officers to meet his legal obligations under threat of dismissal. In practice, it is a rare instance when an active duty military man is dismissed for such a reason.

Since Civil Service pay and so-called "blue collar" pay would also be exempt from attachment, Section 4 of this bill would stand as a discriminatory provision against one class of Federal employees—those retired from the military service.

Our purpose in drafting H.R. 10670 was to promote uniformity with Civil Service retirement wherever possible. Section 4 creates a difference which does not now exist—a discriminatory difference.

Federal monies in the hands of a paymaster are federal property. Section 4 would allow a state or local court to direct the manner in which federal property shall be distributed by the paymasters. Can you imagine the complications which would result when different states have different laws and different state courts render conflicting decisions regarding the rights of a retired military man versus the rights of a former spouse? I foresee an administrative nightmare resulting from Section 4.

Just a few years ago the Congress considered the "Truth in Lending" bill which, as reported from the Banking and Currency Committee, contained a provision that would allow the garnishment of Federal employees' salaries. Members of the Judiciary Committee objected

to this provision and the Congress responded by striking it from the "Truth in Lending" bill.

The correct approach to this matter would be through separate hearings by both the House Armed Services Committee and the Post Office and Civil Service Committee. Perhaps the Judiciary Committee would also be interested as it was in the case of the above-mentioned bill.

This is too complicated a matter to be considered as a "piggy back" amendment to a bill designed to serve a different purpose. Furthermore, H.R. 10670 is too important to be jeopardized by such a controversial and tangential question. Section 4 should be deleted.

CHARLES S. GUBSER.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of the provisions of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

"Chapter 73.—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

- "Sec.
1431. Election of annuity : members of armed forces.
1432. Election of annuity : former members of armed forces.
1433. Mental incompetency of member.
1434. Kinds of annuities that may be elected.
1435. Eligible beneficiaries.
1436. Computation of the reduction in retired pay ; withdrawal for severe financial hardship.
1437. Payment of annuity.
1438. Deposits for amounts not deducted.
1439. Refunds of amounts deducted from retired pay.
1440. Annuities not subject to legal process.
1441. Annuities in addition to other payments.
1442. Recovery of annuity erroneously paid.
1443. Board of Actuaries.
1444. Regulations ; reports to Congress ; determinations.
1445. Corrections of administrative deficiencies.
1446. Restriction on participation.

THE BILL AS REPORTED

H.R. 10670

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Chapter 73 of title 10 United States Code is amended by amending the title of the chapter to read "Chapter 73, SURVIVOR BENEFIT PLAN", and by adding the following immediately after section 1446 :

- "Sec.
"1447. Definitions.
"1448. Application of Plan.
"1449. Payment of annuity : beneficiaries.
"1450. Amount of annuity.
"1451. Reduction in retired or retainer pay.
"1452. Regulations.

“§ 1447. Definitions

“In sections 1447–1452 of this title:

“(1) ‘Base amount’ means—

“(A) the amount of monthly retired or retainer pay to which a person was entitled when he became eligible for that pay, or to which he later became entitled by being advanced on the retired list or performing active duty, or when transferred from the temporary disability retired list to the permanent disability retired list; or

“(B) any amount smaller than that described by clause (A) that is designated by a person on or before the first day for which he became eligible for retired or retainer pay;

as increased from time to time under section 1401a of this title.

“(2) ‘Widow’ means the surviving wife of a person who, if not married to the person at the time of retirement—

“(A) was married to him for at least two years immediately before his death; or

“(B) is the mother of issue by that marriage.

“(3) ‘Widower’ means the surviving husband of a person who, if not married to the person at the time of retirement—

“(A) was married to her for at least two years immediately before her death; or

“(B) is the father of issue by that marriage.

“(4) ‘Dependent child’ means a person who is—

“(A) unmarried;

“(B) under 18 years of age; at least 18, but under 22 years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; and

“(C) the child of a person to whom the Survivor Benefit Plan applies, including (i) an adopted child and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

For the purpose of this clause, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if he shows to the satisfaction of the Secretary of Defense that he has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim. To qualify as a dependent child under this clause, a foster child must also reside, at the time of the death of the person to whom

the Survivor Benefit Plan applies, with that person, receive over one-half of his support from that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of a person while a student as described in this subsection will not be considered to effect the residence of such foster child.

“§ 1448. Application of Plan

“(a) The Survivor Benefit Plan applies to every person who is married or has a dependent child, when he becomes entitled to retired or retainer pay unless he elects not to participate in the Plan before the first day for which he is eligible for that pay. If a person who is married elects not to participate in the Plan at the maximum level, that person’s spouse shall be notified of the decision. An election not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay. However, a person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay but who later marries may elect to participate in the Plan but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries. Such an election may not be revoked. His election is effective the first day of the month after his election is received by the Secretary.

“(b) A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay may elect to provide an annuity to a natural person with an insurable interest in that person.”

“(c) The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to retired pay.

“(d) If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, but his spouse is eligible for dependency and indemnity compensation under subchapter II of chapter 13 of title 38 in an amount that is less than the annuity the spouse would have received under sections 1447-1452 of this title if those sections had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and the maximum percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1449(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service at the time he died.

“§ 1449. Payment of annuity: beneficiaries

“(a) Effective as of the first day after a person to whom section 1448 of this title applies dies, a monthly annuity under section 1450 of this title shall be paid to—

“(1) the eligible widow or widower;

“(2) if the widow or widower is dead or otherwise ineligible under this section, the surviving dependent children in equal shares unless the surviving depend-

ent child or children are residing with the ineligible widow or widower; or

“(3) if there are no eligible beneficiaries under clauses (1) and (2), the natural person who has an insurable interest in the person and who was designated by the person when the person became entitled to retired or retainer pay.

“(b) An annuity payable to a beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a widow or widower shall be paid to the widow or widower while the widow or widower is living or, if the widow or widower remarries before reaching age 60, until the widow or widower remarries. If the widow or widower remarries before reaching age 60 and that marriage is terminated by death, annulment, or divorce, payment of the annuity will be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the widow or widower is also entitled to an annuity under this section based upon the marriage so terminated, the widow or widower may not receive both annuities but must elect which to receive.

“(c) If upon a person's death, the widow or widower is also entitled to compensation under subchapter II of chapter 13 of title 38, the widow or widower may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

“(d) If, upon the death of a person to whom section 1448 applies, that person had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of

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chapter 83 of title 5, United States Code, an annuity under this section shall not be payable.

“(e) If no annuity under this section is payable because of subsection (c) or (d) of this section, any amounts deducted from the retired or retainer pay of the deceased under section 1451 of this title shall be refunded to the widow or widower. If, because of subsection (c) of this section, the annuity payable is less than the amount established under section 1450 of this title, the annuity payable shall be recalculated under that section. The reduction from retired or retainer pay required to provide that recalculated amount shall be recalculated under section 1451 of this title, and the overpayment shall be refunded to the widow or widower.

“(f) An unmarried person who elects to provide an annuity to a person designated by him under subsection (a) (3), but who later marries, may change that election and provide an annuity to his spouse.

“(g) Except as provided in subsection (f), an election under this section may not be changed or revoked.

“(h) Except as provided in section 1450 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Veterans Administration.

“(i) An annuity under this section is not assignable or subject to execution, levy, attachment, garnishment or other legal process.

“§ 1450. Amount of annuity

“(a) If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1449 of this title shall be equal to 55 percentum of the base amount. However, when the widow has one dependent child, the monthly annuity shall be reduced by an amount equal to the mother’s benefit, if any, to which the widow would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(7)(1) of title 42 and calculated assuming that the person concerned lived to age 65. When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by an amount equal to the amount of the survivor benefit, if any, to which the widow or widower would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(7)(1) of title 42 and calculated assuming that the person concerned lived to age 65. For the purpose of the preceding sentence a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work.

“(b) The monthly annuity payable under section 1449 (a)(3) shall be 55 percentum of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with the second sentence of section 1451(a) of this title.

“(c) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this section on the day before the effective date of that increase shall be increased at the same time by the same total percent.

“§ 1451. Reduction in retired or retainer pay

“(a) The retired or retainer pay of a person to whom section 1448 of this title applies, and who has not elected to provide an annuity to a person designated by him under section 1449(a)(3) of this title, or who has elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1449(f) of this title, shall be reduced each month by an amount equal to $2\frac{1}{2}$ percentum of the first \$300 of the base amount plus 10 per centum of the remainder of the base amount. The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1449(a)(3) of this title shall be reduced by 10 percentum plus 5 percentum for each full 5 years the individual named is younger than that person. However the total may not exceed 40 percentum. If, for any period, a person who had been awarded retired or retainer pay is not entitled to that pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when the person is receiving active duty pay and allowances.

“(b) Except as provided in section 1449(e) of this title, a person is not entitled to any refunds of amounts deducted

from retired or retainer pay under this section unless the amounts were deducted through administrative error.

“§ 1452. Regulations

“The President shall prescribe regulations to carry out sections 1447–1452 of this title. Those regulations, which shall, so far as practicable be uniform for all the armed forces, shall include provisions—

(a) that when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall before the date the member becomes entitled to retired or retainer pay be informed of the elections available and the effects of such elections; and

(b) establishing procedures for depositing the amounts referred to in the last sentence of section 1451(a) of this title.”

SEC. 2. The chapter analysis of subtitle A and the analysis of part II of subtitle A of title 10, United States Code, are each amended by amending the item relating to chapter 73 to read as follows:

“73. Survivor Benefit Plan..... 1447”.

Sec. 3. (a) The first section of this Act applies to any person who initially becomes entitled to retired or retainer pay on or after the date of enactment of this Act. An election made before that date by such a person under section 1431 of title 10, United States Code, is cancelled. However, a married person or a person with a dependent child who initially becomes entitled to retired or retainer pay within 180 days after the date of enactment of this Act may, within 180 days after becoming so entitled, elect not

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to participate in the Survivor Benefit Plan established by the first section of this Act.

(b) Any person who is entitled to retired or retainer pay on the date of enactment of this Act may elect to participate in the Survivor Benefit Plan established by the first section of this Act before the first anniversary of that date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, or who is depositing amounts under section 1438 of title 10, may elect before the first anniversary of the date of enactment of this Act—

(1) so to participate in the Plan and to continue his participation under chapter 73 of title 10, as in effect on the day before the date of enactment of this Act, provided the total of the annuities elected does not exceed 100 per centum of his retired or retainer pay; or

(2) so to participate in the Plan and, notwithstanding section 1436(b) of title 10, to terminate his participation under chapter 73 of title 10, as in effect on the day before the date of enactment of this Act.

A person who elects under clause (2) to participate in the Plan and to terminate his participation under chapter 73 of title 10 is not entitled to any refunds of amounts deducted from his retired or retainer pay under chapter 73 of title 10 or to any payments thereunder on his behalf.

(c) Notwithstanding the first section of this Act, and except as otherwise provided in this section, chapter 73 of title 10, United States Code (other than the last two sen-

“Chapter 71.—COMPUTATION OF RETIRED PAY

Sec.

- 1401. Computation of retired pay.
- 1402. Recomputation of retired pay to reflect later active duty.
- 1403. Disability retired pay : treatment under title 26.
- 1404. Applicability of section 47a of title 5.
- 1405. Years of service.
- 1406. Limitations on revocation of retired pay.”

tences of section 1436(a), section 1443, and section 1444 (b)) as in effect on the day before the date of enactment of this Act, shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of title 10 and who have not elected elected under subsection (b) (2) of this section to participate in the Survivor Benefit Plan established by the first section of this Act.

(d) For the purposes of this section, the “base amount” of a person is the amount of monthly retired or retainer pay to which he was entitled on the date of enactment of this Act, or to which he later became entitled by being advanced on the retired list or by performing active duty or when transferred from the temporary disability retired list to the permanent disability retired list, as increased from time to time under section 1401a of title 10.

SEC. 4. Chapter 71 of title 10, United States Code, is amended as follows:

(1) By inserting the following item in the analysis: “1407. Attachment of retired or retainer pay.”

(2) By adding the following section:

“§ 1407. Attachment of retired or retainer pay

“Notwithstanding any other provision of law, the retired or retainer pay of a member of an armed force shall be subject to attachment to comply with the order of a court of competent jurisdiction in favor of a spouse, former spouse, or children. In no event shall the amount of deduction pursuant to such attachment exceed 50 percentum of the retired or retainer pay.”

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SEC. 5. (a) A person who in the date of enactment of this Act is a widow, or within one calendar year of the date of enactment becomes a widow, of a person who was entitled to retired or retainer pay when he died, and whose annual income from all sources as determined under section 503 of title 38, United States Code, exclusive of pension received under chapter 15 of title 38, United States Code, is less than \$1,400, shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the first section of this Act.

Clause (5) of Section 3(a) of the Act of August 10, 1956, Chapter 1041, as amended. (33 U.S.C. 857a(2))

**“§ 857a. Rights, benefits, privileges and immunities:
exercise of authority by Secretary of Commerce or
designee**

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(a) The rules of law that apply to the Armed Forces under the following provisions of Title 10, including changes in those rules made after August 10, 1956, apply also to the Coast and Geodetic Survey:

(5) Chapter 73, Annuities Based on Retired or Retainer Pay.”

Clause (5) of Section 221 (a) of the Public Health Service Act, as amended. (42 U.S.C. 213a)

**“§ 213a. Rights, benefits, privileges, and immunities
for commissioned officers or beneficiaries; exercise
of authority by Secretary or designee**

(b) Annuity under subsection (a) shall be in an amount which when added to the widow's income from all sources,

exclusive of pension under chapter 15 of title 38, United States Code, equals \$1,400 per year.

SEC. 6. Section 3(a) of the Act of August 10, 1956, chapter 1041, as amended (33 U.S.C. 857a(a)), and section 221 (a) of the Public Health Service Act, as amended (42 U.S.C. 213a), are each amended by amending clause (5) to read as follows:

“(5) Chapter 73, Survivor Benefit Plan.

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of Title 10:

(5) Chapter 73, Annuities based on Retired or Retainer Pay.”

Section 415 of title 38 United States Code:

“§ 415. Dependency and indemnity compensation to parents

* * * * *

“(g) * * *

“(M) payments of annuities elected under Chapter 72 of title 10.”

Section 503 of title 38 United States Code:

“§ 503. Determinations with respect to annual income

* * * * *

“(17) payments of annuities elected under Chapter 73 of title 10.”

“SEC. 7. Sections 415 (g) (M) and 503(17) of title 38 United States Code are amended to read as follows: ‘payments of annuities elected under sections 1431–1446 of chapter 73 of title 10.’”

SUMMARY OF H.R. 10670

PURPOSE

The purpose of the bill is to establish a permanent Survivor Benefit Plan for dependents of retired career military personnel, to authorize the attachment of military retired pay, and to provide a program of minimum income maintenance for current military widows.

COST

There will be no increase in budgetary requirements of the Department of Defense until approximately the year 2000 as a result of the enactment of the bill.

DEPARTMENTAL POSITION

The bill is supported by the Department of Defense although, in some instances, the Department recommended different legislative language to achieve the bill's objectives.

COMMITTEE POSITION

The Committee on Armed Services, a quorum being present, unanimously approved H.R. 10670, without amendments, and recommends its enactment.





